#

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3405 OF 2006

Sudesh Madhukar Kulkarni .. Applicant

Versus

State of Maharashtra .. Respondent

Ms.Deepa Sawant i/b. C.G.Gavnekar for applicant

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 26th September 2006

P.C.

. The applicant original accused No.7 in C.R. No.101 of 2006 which has been registered at Wagale Estate police station, Thane. The

offences alleged are punishable under section 465, 467, 468, 471, 472 and 420 read with 34 I.P.C.

2. Applicant has been put under arrest on 30th March 2006 and continues to be in custody. His application being rejected by the trial court, the instant application is filed. I have heard learned Advocate for applicant and A.P.P. for State.

3. My attention is invited to an order passed by me on 4th September 2006 in the case of accused No.8 and other accused enlarging them on bail. The learned Advocate for applicant submits that apart from the principle of parity even on account of limited role which is attributed to the applicant, who is commission agent, that he deserves to be enlarged on bail. More so, when the charge sheet has been filed and investigations are already completed.

4. These contentions are countered and firstly, Ms.Deshmukh, A.P.P. submits that the applicant had a definite role to play. At his instance Rs.30 lakhs have been recovered so also a flat has been traced to be in his possession. He had mobile conversations with the other accused and it is not as if he was involved only as a Commission agent.

5. In my order pertaining to other accused, I have discussed the matter in some details. Suffice it to state that at this prima facie stage, from the statement of Branch Manager of the complainant bank, it appears that the applicant was acting at their behest and soliciting deposits from the interested parties. In this case, along with other broker, Ghanshyam Gupta, the applicant arranged for deposits with the concerned branch of bank and in turn for such services he was paid some amount. The other allegations pertain to misappropriation, forgery and cheating involving transferring of

the funds, which have been deposited with the complainant bank, to an account of third party which is public trust, contrary to the instructions and on the basis of bogus and fictitious documents. There, prima facie, the applicant did not have any role to play. In such circumstances, apart from parity applicant deserves to be enlarged on bail. Hence following order:

i) The applicant arrested in connection with C.R.No.101 of 2006 registered with Wagale Estate Police Station shall be enlarged in the sum of Rs.25,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will remain present before the concerned investigating officer Wagale Estate Police Station once a week till conclusion of the trial. The applicant shall deposit his passport forthwith with

Wagle Estate Police Station. Deposit of passport is condition precedent.

iii) The order of bail will be given effect only after the applicant furnishes to the investigating officer the details about his place of residence and address where he proposes to stay after he is enlarged on bail. The applicant will not change his residential address thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate

with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)